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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of ) MM Docket No. 93-178  
) )  
HOWARD B. DOLGOFF ) File No. BPH-911223ME  
) )  
MARK AND RENEE CARTER ) File No. BPH-911224MD  
) )  
For Construction Permit for a New )  
FM Station on Channel 292A in )  
Miramar Beach, Florida )

FCC 93M-555  
32272

MEMORANDUM OPINION AND ORDER

Issued: August 30, 1993 ; Released: August 31, 1993

1. Under consideration are the following:

Motion for Partial Summary Decision, filed July 12, 1993, by Howard B. Dolgoff ("Dolgoff");

Opposition to Partial Motion for Summary Decision and Countermotion for Summary Decision, filed July 26, 1993, by Mark and Renee Carter ("the Carters");

Opposition to Countermotion for Summary Decision, filed August 10, 1993, by Dolgoff;

Contingent Motion to Enlarge Issues, filed July 26, 1993, by the Carters;

Petition for Leave to Substitute Attachment, filed July 29, 1993, by the Carters;

Opposition to Contingent Motion to Enlarge Issues, filed August 10, 1993, by the Mass Media Bureau ("Bureau");

Opposition to Contingent Motion to Enlarge Issues, filed August 10, 1993, by Dolgoff; and

Consolidated Reply to Oppositions, filed August 25, 1993, by the Carters.

2. The Carters in their Contingent Motion seek the designation of site availability and site misrepresentation/character qualifications issues against Dolgoff. However, in the Consolidated Reply they withdraw their opposition to Dolgoff's Motion for Partial Summary Decision and Countermotion for Summary Decision. In light of this development there is no impediment to

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the grant of Dolgoff's Motion for Partial Summary Decision and IT IS GRANTED, and the air hazard issue specified against him in the Hearing Designation Order ("HDO"), DA 93-700, released June 28, 1993, IS RESOLVED in his favor.

3. The Carters also seek a hard look violation issue and EEO and nondisclosure issues.

4. The Carters' instant request for a hard look violation issue repeats the same arguments made, and rejected, in connection with the Carters' request for certification. Cf. Memorandum Opinion and Order, FCC 93M-478, released July 20, 1993. The rulings made therein are incorporated herein by reference. The Carters' request, in effect, is for reconsideration of Memorandum Opinion and Order, FCC 93M-478. As such, it must be denied. Section 1.102(2) of the Commission Rules does not permit reconsideration of interlocutory actions.

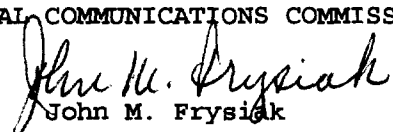
5. The Carters also seek EEO and nondisclosure issues on the grounds that Dolgoff failed to disclose in his application that the Commission in 1990 found WTHZ(FM), the station managed by Dolgoff, guilty of inadequate EEO efforts. See Letter to Howard B. Dolgoff, 5 FCC Rcd 7695 (1990). As for the EEO issue request, it is noted that no willful violations of that rule were found by the Commission, and that the Commission specifically found that there was no evidence of discrimination by the licensee of WTHZ(FM). Moreover, the Commission granted the 1988 WTHZ(FM) license renewal application, since the Commission found "no substantial and material question of fact to warrant a hearing." Letter to Howard B. Dolgoff, supra. Under these circumstances it is clear that there is no basis, either in fact or in law, for granting the Carters' request for designation of EEO, reporting and related character qualifications issues against Dolgoff.

6. Dolgoff filed his Miramar Beach application with the Commission on December 23, 1991. In light of the fact that the full Commission had resolved all outstanding issues relating to EEO violations in Letter to Howard B. Dolgoff, supra, and in light of the fact the 1988 license renewal application for WTHZ(FM) had been granted, there was no requirement that Dolgoff report, in his instant application, the Commission's December 26, 1990 action taken in Letter to Howard B. Dolgoff, supra. Dolgoff disclosed in his application his connections with the licensee of WUMX(FM) (formerly WTHZ(FM)), and, unquestionably, any party could easily have ascertained the fact that the full Commission took the actions which it did in Letter to Howard B. Dolgoff, supra one year prior to the filing of Dolgoff's Miramar Beach application.

7. Under these circumstances there was clearly no motive for Dolgoff to conceal, deceive, or mislead the Commission with respect to the action taken by the Commission itself in Letter to Howard B. Dolgoff, supra. It is well-established that addition of a Section 1.65/reporting issue is warranted only where there is an intent to conceal facts from the Commission, or where there is a pattern of repeated reporting violations or other factors reflecting significant carelessness or inattentiveness. Merrimack Valley Broadcasters, 99 FCC 2d 680, 683-84 n. 9 (1984); Richardson Broadcast Group, 7 FCC Rcd 1583 (1992). None of these circumstances is present in the instant case.

In light of the foregoing, the Carters' Contingent Motion to Enlarge Issues, filed July 26, 1993, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

  
John M. Frysia  
Administrative Law Judge